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FRIEDLIN *v.* CROCKIN et al.

March 21, 1918.

[95 S. E. 432.]

1. **Pleading (§ 399*)—Variance—Setting Aside Verdict.**—Where, before taking possession under lease, lessee corporation was dissolved, and the lessor was notified that premises would not be occupied under lease, the lessor could not recover in a suit against stockholders jointly on promise to be responsible for the rent until another tenant was procured, where the evidence showed no joint promise, and, the jury having, in disregard of instructions, found a joint verdict against defendants the court properly set it aside.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 479.]

2. **Frauds, Statutes of (§ 23 (1)*)—Promise to Answer for Debt of Another.**—Verbal promise of stockholders to be responsible for rent on premises leased by corporation until another tenant was procured was collateral, and the lessor, who did not release corporation or waive any of her rights, could not recover on such promise, in view of Code 1904, § 2840, requiring promises to answer for the debt of another to be in writing, signed by the party to be charged or his agent.

Sims, J., dissenting.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 519.]

Error to Hustings Court, City of Portsmouth.

Action by one Friedlin against Nathan Crockin and others. Verdict and judgment for defendants, and plaintiff brings error. Affirmed.

S. Burnell Bragg and Pender & Way, all of Norfolk, for plaintiff in error.

John W. Happer and Frank L. Crocker, both of Portsmouth, for defendants in error.

CASEY *v.* WALKER & MOSBY.

March 21, 1918.

[95 S. E. 434.]

1. **Assumpsit, Action of (§ 4*)—When Action Lies.**—Assumpsit does not lie in any case, except when damages are sought for the breach of a contract, express or implied.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 4.]

2. **Principal and Agent (§ 41*)—Revocation of Authority—Rights of Parties.**—Where defendant authorized plaintiffs for a commission to rent and care for property without specifying period of

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

agency, and plaintiffs knew that the property would be sold, and did not object to the giving of an option thereon, the agency was revocable, and when defendant sold the property, plaintiffs could not recover commissions on rents not yet collected nor damages for the breach.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 280.]

Error to Corporation Court, City of Lynchburg.

Assumpsit by J. S. Walker and A. W. Mosby, partners, doing business as Walker & Mosby, against James F. Casey. Judgment for plaintiffs, and defendant brings error. Reversed and remanded.

Harrison & Long, of Lynchburg, for plaintiff in error.

Easley & Coleman and *Volney E. Howard*, all of Lynchburg, for defendants in error.

H. W. WILLIAMS & SONS, Inc., v. POSTAL TELEGRAPH-CABLE CO.

March 21, 1918.

[95 S. E. 436.]

Telegraphs and Telephones (§ 54 (5)*)—Delay in Delivery of Message—Damages.—Act Cong. June 18, 1910, c. 309, 36 Stat. 539, requires telegraph companies to print and publish rates, rules, classifications, regulations, and practice and to file them with the Interstate Commerce Commission, and confers upon that tribunal jurisdiction to determine the reasonableness of such rates. A telephone company incorporated into its blank forms of contracts for the sending of messages a statement limiting its liability for delay in the transmission of an unrepeatd message to the amount received for sending the same. A brokerage firm sent for delivery an unrepeatd interstate message, relating to the sale of a shipment of potatoes, but such message was not delivered until too late to take advantage of the prevailing market. Held, that the telegraph company was not liable for the loss of profits on the sale of potatoes.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 872; 13 Va.-W. Va. Enc. Dig. 186.]

Error to Circuit Court, Northampton County.

Action by H. W. Williams & Sons, Incorporated, against the Postal Telegraph-Cable Company. Judgment for defendant, and plaintiff brings error. Affirmed.

S. J. Turlington, of Accomac, and *Jeffries & Jeffries*, of Norfolk, for plaintiff in error.

Ino N. Sebrell, Jr., of Norfolk, for defendant in error.

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.